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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

William Knowles, ) No. CV-08-01283-PHX-ROS  
Plaintiff, ) **ORDER**  
vs. )  
U.S. Foodservice, Inc., et al., )  
Defendants. )  
\_\_\_\_\_  
)

16 Before the Court is the parties' Joint Statement of Discovery Dispute. (Doc. 98).  
17 Plaintiff seeks an order requiring Defendant to supplement its responses to discovery  
18 requests. In interrogatories and a deposition of a witness, Plaintiff asked for the identity of  
19 any person assuming the route duties held by Plaintiff during his employment. Defendant  
20 responded by identifying the drivers who had assumed Plaintiff's route duties. Plaintiff does  
21 not dispute that Defendant's response was complete and accurate at the time it was made, as  
22 Defendant named every individual who had assumed Plaintiff's route duties. But Plaintiff  
23 believes that since that time, another individual has been hired by Defendant to assume  
24 Plaintiff's former route.

25       Federal Rule of Civil Procedure 26(e)(2)(A) requires a party to supplement an  
26 interrogatory “if the party learns that in some material respect the disclosure or response is  
27 incomplete or incorrect . . . .” Defendant argues it has no duty to supplement its response  
28 because its response was complete and accurate when it was made. Defendant argues its

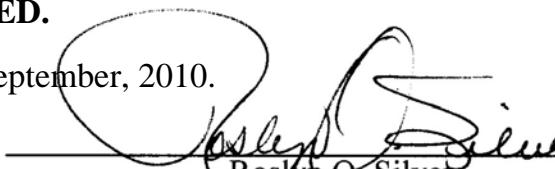
1 response was accurate at the September 14, 2009 deadline to supplement discovery, and also  
2 when summary judgment briefing was completed on November 23, 2009. Defendant  
3 contends that it “does not have an ongoing, never-ending obligation to supplement its  
4 discovery responses after the close of discovery . . . .” (Doc. 98 at 4).

5 There may be circumstances under which supplementation of discovery should be  
6 required after the close of discovery. *See Episcopo v. General Motors Corp.*, 2005 WL  
7 628243, \*6 (N.D. Ill. 2004) (“Although Rule 26 does not explicitly provide for  
8 supplementation of disclosures and responses after the close of discovery, we think the  
9 language of Rule 26(e)(2) is broad enough to require supplemental disclosures under certain  
10 circumstances.”). *Episcopo* did not expressly set forth the circumstances under which  
11 supplemental disclosures would be appropriate, but suggested they would proper when doing  
12 so would be consistent with the goals of discovery, such as narrowing the issues for trial and  
13 preventing unfair surprise. Such circumstances are not present here. Plaintiff concedes  
14 Defendant’s response was accurate at the time it was made. Even if it is true Defendant  
15 recently hired a younger driver to assume Plaintiff’s former route, that would not provide  
16 evidence Plaintiff was discriminated against based on his age in December 2007. In  
17 requesting further discovery, Plaintiff appears to suggest a far-fetched scheme in which  
18 Defendant waited a lengthy time to replace Plaintiff with a younger driver in order to avoid  
19 the appearance of age discrimination. Defendant’s response was accurate when made, and  
20 practical considerations require that there be some deadline. Without a deadline, a party  
21 would have a never-ending obligation to supplement responses. The deadline to supplement  
22 discovery in the Court’s Rule Scheduling Order expired over eight months ago.

23 Accordingly,

24 **IT IS ORDERED** Plaintiff’s request for an order requiring Defendant to supplement  
25 its discovery responses **IS DENIED**.

26 DATED this 10<sup>th</sup> day of September, 2010.

27   
28 Roslyn O. Silver  
United States District Judge